

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 302 - SB 1190

March 4, 2017

SUMMARY OF BILL: Requires captive insurance companies (captives) which fail to make prompt or accurate tax payments to pay interest and penalties on outstanding premium tax liabilities. In addition to any taxes owed, captives must pay the greater of \$500 or an amount equal to the five percent for the first month or fractional part of the first month of delinquency. If the delinquency period exceeds one month, such tax is increased by an additional five percent for the second month or fractional part of the second month. If the delinquency period exceeds two months, the captive is required to pay a penalty of one half of one percent of the amount of tax due for third month and each subsequent month of delinquency. Establishes a maximum penalty of \$1,000 that may be imposed on a captive that is not more than three days delinquent. All delinquencies carry an interest penalty of 10 percent per annum from the date the amount was due until paid. Prohibits any penalty or interest from being waived.

Authorizes the Commissioner of the Department of Commerce and Insurance (TDCI) to grant up to a 60-day extension of time to a captive to file premium tax returns and pay premium taxes owed without application of any penalties other than the interest penalty of 10 percent per annum from the date the amount was due until paid. Establishes that any captive that fails to pay any taxes due, plus any penalties and interest for 60 days beyond the due date may be suspended from transacting any business of insurance in the state until all due amounts are paid. Requires taxes be paid in a manner established by the Commissioner through rules and allows the TDCI to charge a convenience fee for electronic payment of dues, however, such fee may not exceed the administrative costs of accepting such payments.

Authorizes a captive or protected cell captive insurance company (cell captive) to submit a letter of dormancy to the Commissioner. Any period of dormancy is prohibited from lasting over five years. Requires a captive or cell captive to continue to maintain capital and surplus requirements, submit annual financial reports, and pay the annual statement fee. Establishes that a captive or cell captive that is in a period of dormancy is not liable for the aggregate tax established pursuant to Tennessee Code Annotated § 56-13-114(c), but is still liable for payments of premium tax on all premium payments received prior to the issuance of the letter of dormancy. Requires a dormant captive or cell captive to receive a rescission of a letter of dormancy prior to issuing any insurance policies and resuming the business of insurance in this state. Establishes that an application for a letter of dormancy and an application for the rescission of a letter of dormancy constitute a change of business plan and are therefore subject to the \$400 fee imposed on insurance companies for a change in business plan. Authorizes the Commissioner of the TDCI to promulgate rules to effectuate the provisions heretofore provided.

Upon consent by the Commissioner of the TDCI and application provided by a cell captive, one of its protected cells may be converted to a captive, or inversely, a captive may become a

protected cell. The Commissioner shall issue a certificate of authority to any cell or captive which has successfully converted to a captive or cell, respectively. If the converting cell is a series of a limited liability companies, the cell must file organizational documents with the Secretary of State, as applicable and requires that the new entity possess all assets and liabilities, including outstanding insurance liabilities owned by the predecessor series.

Removes the current threshold determining the maximum amount an insurance company can be charged for an examination of its books or business of insurance. Clarifies that compensation and per diem allowances incurred for such examination must be set at a reasonable amount commensurate with the market rate for such services.

ESTIMATED FISCAL IMPACT:

Other Fiscal Impact - Due to multiple unknown factors, the net change in state revenue to the Captive Insurance Section of the Department of Commerce and Insurance is anticipated to be positive over time; however, the extent and timing of any potential positive impact is unknown. Any other impact to state or local government is estimated to be not significant.

Assumptions:

- This bill authorizes captives and cell captives to enter into a period of dormancy, establishes penalties for captives and cell captives who fail to promptly or accurately pay premium tax liabilities, sets examination fees at a market rate, and creates a process for captives and cell captives, likewise and respectively to convert to cell captives and captives.
- A state of dormancy is attractive for captives which have effectively ceased operating as an insurance company while allowing retainment of licensure in the case insurance operations resume in the future.
- Pursuant to provisions of the bill, any issuance or rescission of a letter of dormancy by a captive or cell captive is judged to be a change of business plan.
- Based on information provided by TDCI, a change in business plan provided by a captive must pay a fee of \$515.
- Each captive that enters a state of dormancy by submission of a letter of dormancy or exits a state of dormancy through a rescission of a letter of dormancy will be required to pay \$515.
- Based on information provided by the TDCI, the number of captives that will become dormant as a result of this bill is assumed to be minimal; however, any captive which applies and becomes dormant is not required to pay the aggregate minimum tax rate of \$5,000 established pursuant to Tenn. Code Ann. § 56-13-114(c).
- The imposition of penalties and interest upon captives and cell captives for delinquency of payment of premium tax liabilities is estimated to result in no significant impact on revenue to the Captive Insurance Section (CIS), as delinquent insurance companies are currently assessed civil penalties for delinquent and outstanding payments.

- Authorizing conversion of captives into cell captives and inversely, cell captives into captives, is estimated to have no significant impact on premium tax revenue collected by the CIS.
- Captives and cell captives which choose to convert will be required to pay the \$515 fee for change of business plans.
- This bill is estimated to result in additional captives seeking registration and licensure with the CIS because the changes made through the provisions of this bill are reasonably assumed to be favorable for the attraction, formation and retainment of captives; however, the number of additional captives licensed and the resulting increase in state revenue collected subsequent to such additional licenses will likely be partly offset by a decrease in revenue from captives which choose to enter a state of dormancy.
- Due to numerous unknown factors, including the number of captives which will choose to become dormant and the resulting decrease in premium tax revenue, the number of captives which this bill will successfully attract, form or retain in this state, and the resulting increase in premium tax revenue, and additional revenue collected from examination and change of business plan fees cannot be reasonably estimated; however, the net impact in revenue to the CIS is assumed to be positive.

IMPACT TO COMMERCE:

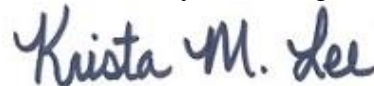
Other Fiscal Impact - Due to multiple unknown factors, a specific impact to commerce and jobs in Tennessee is unknown. However, passage of this bill may generate additional commerce and jobs in Tennessee over time. The extent and timing of any potential positive impacts cannot be determined.

Assumption:

- Due to numerous unknown factors, including the number of captives which will choose to become dormant and the resulting decrease in premium tax revenue, the number of captives which this bill will successfully attract, form or retain in this state, the resulting increase in premium tax revenue, and additional revenue collected from examination and change of business plan fees cannot be reasonably estimated; however, the net impact to insurance companies in this state is reasonably assumed to be positive.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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